

Ramesh Kumar Vs. National Insurance Co. Ltd. and ors.

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Court : Mumbai

Decided On : Aug-17-2001

Reported in : (2002)104BOMLR609

Judge : A.P. Misra and ;U.C. Banerjee, JJ.

Appeal No. : Civil Appeal Nos. 40 of 1986, 521-23 of 1993, 6542-45 of 1994, 3393-95, 10846-50, 16793-96 of 1996,

Appellant : Ramesh Kumar

Respondent : National Insurance Co. Ltd. and ors.

Judgement :

A.P. Misra, J.

1. Leave granted.

2. The aforesaid sets of cases have been classified in three categories, which raise a common question about the liability of payment of compensation by the Insurance Company under the Motor Vehicles Act:

CATEGORY I

C.As. Nos. 5010, 5051 of 1999, 623 of 1997, 40 of 1986, 5457 of 2001 [arising out of S.L.P. (C) 20312 of 1997], 5458 of 2001 [arising out of S.L.P. (C) No. 20313 of

1997], 3393-95, 10846-50 of 1996, 5495 of 2001 [arising out of S.L.P. (C) No. 13954 of 2000], 5460 of 2001 [arising out of S.L.P. (C) No. 14855 of 2000], 950-57, 1090 of 1999, 521-23 of 1993, 5461-62 of 2001 [arising out of S.L.Ps. (C) Nos. 15554-55 of 2000], 1249, 1253, 1255, 1254, 1251, 1252 of 1999, 5463 of 2001 [arising out of S.L.P. No. 3938 of 1996] and 6542-45 of 1994.

CATEGORY II

C.As. Nos. 5385 of 2001 [arising out of S.L.P. (C) No. 9873 of 2000], 16793-96 of 1996, 229 of 1999, 5386-5410 of 2001 [arising out of S.L.Ps. (C) Nos. 4098-4122 of 2001], 5411-16 of 2001 [arising out of S.L.Ps. (C) Nos. 11427-32 of 2001], 5417 of 2001 [arising out of S.L.P. (C) No. 11760 of 2001], 5418-27 of 2001 [arising out of S.L.Ps. (C) Nos. 10938-47 of 2000], 4458 of 1999, 5223 of 2000, 5428-32 of 2001 [arising out of S.L.Ps. (C) Nos. 12889-93 of 2001], 1697 of 1999, 5433-44 of 2001 [arising out of S.L.Ps. (C) Nos. 12627-38 of 2000], 6237 of 1997, 272-77 of 1999, 5445-50 and 5450-A of 2001 [arising out of S.L.Ps. (C) Nos. 8116-22 of 2001], 5451-52 of 2001 [arising out of S.L.Ps. Nos. 6956-57 of 2001], 5453-56 of 2001 [arising out of S.L.Ps. (C) Nos. 10419-22 of 2001] and 3843 of 2000.

CATEGORY III

C.As. Nos. 5464 of 2001 [arising out of S.L.P. (C) No. 3408 of 2001], 5465 of 2001 [arising out of S.L.P. (C) No. 3409 of 2001], 6755 of 1999, 5466-67 of 2001 [arising out of S.L.Ps. (C) Nos. 8765-66 of 2001] and 5468-69 of 2001 [arising out of S.L.Ps. (C) Nos. 9892-93 of 2001].

3. The first category of cases arise out of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the old Act'). The question raised for this category is:

Whether the Insurance Company is liable to pay compensation on account of the death or bodily injury of the gratuitous passengers including the owner of the goods or his representative, travelling in a goods vehicle under Section 95 of the said Act?

4. The second category of cases arise out of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act') prior to its amendment in 1994. In this

category also a similar question is raised. The third category of cases also arise under the new Act but after its amendment by Act 54 of 1994. In this category also the same question is raised.

5. Thus the question raised in all these cases is about the liability of, the Insurance Company, for the payment of compensation to the claimants for those falling under the aforesaid field on account of their death or bodily injury while travelling in a goods vehicle. We are disposing of through this judgment the groups of cases falling under Categories I and III respectively. So far as cases covered under Category II are concerned, we will be dealing with them through a separate judgment and order,

6. Category I cases are all in which a claim petition has been filed by the claimants on account of death or bodily injuries of either the owners or their representative or the gratuitous passengers. In all these cases the claimants claimed compensation under Section 95(1)(b)(i) and Clause (ii) of the proviso after its amendment in 1969 under the old Act. The submission is, it is the Insurance Company, which is liable to pay the compensation notwithstanding that the vehicle involved in the accident is a goods vehicle. On the other hand, submission for the Insurance Company is that they are not liable for those passengers who travel by goods vehicle, in view of the language used in Section 95 of the old Act. The cases under this category need not detain us long as this question has been directly raised and decided in the case of *Mallawwa v. Oriental Insurance Co. Ltd.* : AIR 1999 SC589 . In this case the accidents were in the period between 1971 and 1985. This Court held, the Insurance Company is not liable for any damage in case of the gratuitous passengers including owner of the goods or his representative who travelled in a goods vehicle. So the first category of cases is disposed of in terms of this declaration that liability to pay compensation to the claimants of such person is not on the Insurance Company but on the owner of the goods vehicle. In case the Insurance Company had made part or full payment towards such compensation awarded, the same shall not be refunded from the claimants but is recoverable by the Insurance Company from the owner. In case the amount has been withdrawn by the claimants on furnishing any security, the said security shall stand discharged. In case no payment or part payment has been made to the claimants,

we direct the owners of the vehicle to pay the awarded compensation to the claimants within a period of three months from today. Accordingly the first category of cases is disposed of.

7. This takes us to the third category of cases where a similar question is raised regarding liability of the Insurance Company under the new Act after its 1994 amendment. The submission for the claimant is, the Insurance Company is liable to pay the compensation both in view of the decision of this Court in *New India Assurance Co. v. Satpal Singh* : AIR 2000 SC235 , and also in view of its 1994 amendment. This Court in this case, while interpreting Sections 147(1)(i) and (ii) of the new Act holds the Insurance Company liable to pay the compensation both for the owner and his representative and also for the gratuitous passengers travelling in god vehicle. In this third category, in spite of the said declaration the claimants have confined their claim only for the owner or his representative who were travelling in a goods vehicle and not for the gratuitous passengers. Since *Satpal Singh* (supra) confers right over gratuitous passengers also, which is not claimed by any of the claimants under this category, thus declaration of law in *Salpal Singh* (supra) is not required to be considered for this category, as claim for the owner and his representative is not disputed even by the learned counsel for the Insurance Company, after its aforesaid 1994 amendment, that the Insurance Company is liable to pay compensation for such person even when they were travelling in a goods vehicle. This is in view of the 1994 amendment in Sub-clause (i) of Section 147(1)(b) of the Act in which the following words were brought in:..Injury to any person, including owner of the goods or his authorised representative carried in the vehicle.

8. Thus this category of cases is also disposed of by declaring that compensation awarded in such cases where deceased or injured persons were travelling in a goods carriage who were owner or his authorized representative, the Insurance Company is liable to pay the compensation. Any compensation or part of it not paid shall be paid to the claimants by the Insurance Company within eight weeks of this order. Any such amount withdrawn by the claimants which was deposited by the Insurance Company on furnishing security, such security stands discharged.

9. Learned counsel appearing for the Insurance Company has submitted that even though the Insurance Company is liable to pay to the legal representatives of the owner or authorised representative, the question is whether those travelling were truly owners of the goods or not. This in our considered opinion is a question of fact which we need not advert to. Only in cases it is recorded by the Tribunal that they were not the owners then only the Insurance Company could succeed that they are not liable to pay. In any case if the Insurance Company has not raised any such issue they cannot be permitted to raise it now. Unless such an issue was raised, foundation laid in the pleading and if not adjudicated by the Tribunal thereafter if a ground is raised before the High Court yet not decided, there could be possibility of remanding the case otherwise it cannot be permitted to be raised. We have not been shown in any of these cases to qualify for the above. Accordingly we dispose of these cases falling under the third category, by declaring that the Insurance Company is liable to pay the compensation for the deceased or injured persons travelling in a goods carriage, who were either the owner or his representative. These appeals are disposed of accordingly.